

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

ANYTIME LABOR, INC.;
RUNIA TRANSPORT, INC.;
DHL WORLDWIDE EXPRESS.

Employer

and

Case 36-RC-6260

TEAMSTERS LOCAL #206,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record¹ in this proceeding, the undersigned makes the following findings and conclusions.²

SUMMARY:

This case involves two contracting relationships. Airborne Express/DHL Worldwide Express ("Airborne/DHL") contracts its delivery work out to Runia Transport, Inc. ("Runia Transport"), which in turn subcontracts the work out to Anytime Labor, Inc. ("Anytime Labor"). The Petitioner filed the instant petition seeking a unit of all full-time and regular part-time drivers, loaders, and dispatchers working out of the Airborne Express Eugene, Oregon facility, excluding guards, clerical, confidential, and supervisory employees as defined by the Act.³ Petitioner asserts that the unit employees are jointly employed by

¹ Briefs from Runia Transport, Inc. and the Petitioner were timely received and duly considered.

² The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein; the labor organization herein involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

³ During the hearing the parties stipulated that drivers loaders and dispatchers working out of facilities located in Roseburg and North Bend, OR were also appropriately included in the unit.

Runia Transport and Anytime Labor.⁴ Anytime Labor admits that it employs the petitioned-for employees, but Runia Transport asserts that it is not an employer and/or joint employer of the petitioned-for employees. Based on the following evidence and legal analysis, as well as, the record as a whole, I find, that Runia Transport, Inc. is not a joint employer of the petitioned-for employees at issue in this case.

I. EVIDENCE:

a) Background

1. Contractual Relationships

Airborne Express (“Airborne”) is an overnight packaging service courier delivering packages throughout the United States and internationally. Airborne contracts out its delivery work to various local contractors who take on the physical handling and delivery of packages. Sometime in 2000 or 2001, Airborne signed a service contract with local contractor Runia Transport in Eugene, Oregon. Runia was responsible for receiving the Airborne aircraft, unloading packages, and delivering packages to the appropriate destination.

On September 3, 2003 Airborne merged with another overnight packaging service, DHL Worldwide Express. The latest contract memorializing Runia Transport’s obligations at the Eugene, Oregon operation was signed on November 17, 2003. Although operations at the Airborne’s Eugene facility basically remained the same after the merger, Runia Transport decided at that time to contract with a personnel-leasing company called Anytime Labor, Inc. for its personnel needs. There is no written contract memorializing the agreement between Runia and Anytime Labor.⁵

2. The Eugene Facility

It is undisputed that since September 2003, the majority of the employees working out of the Eugene facility are employed by Anytime Labor. These employees include overall manager Carol Sharrow,⁶ Eugene facility manager Charles (“Chuck”) Rendsland, and assistant manager Mike Zentz. Reporting to the managers are supervisors Gary Songer, Travis Applewhite, and dock supervisor Antonio Campos. Reporting to the supervisors are dispatcher Wendy Sage and about 24 drivers and dockworkers, who are responsible for loading, unloading, pick up, and delivery of DHL packages. Sharrow, Rendsland, and Zentz are stipulated statutory supervisors, while Songer, Applewhite, Campos, are stipulated unit employees.⁷ There are also three DHL employees working out of the Eugene facility: Station Manager Chris Steindorf,

⁴ Initially, the Petitioner contended that the unit employees were employed jointly by DHL Worldwide Express, Runia Transport Inc., and Anytime Labor, Inc., but after hearing the Petitioner changed its position and withdrew its claim that DHL also jointly employed the petitioned-for employees.

⁵ I note that the Union did not begin its organizing campaign until April or May of 2004, when it was approached by an employee from the Eugene facility who was interested in organizing. Therefore, Runia Transport made its decision to transfer its employees to Anytime Labor long before this Union organizing campaign began.

⁶ Sharrow manages Anytime Labor employees located in Mount Vernon, WA; Bremerton, WA; and Eugene, OR.

⁷ Based on the stipulation of Anytime Labor and Petitioner, I find that Sharrow, Rendsland and Zentz are supervisors within the meaning of the Act and thereby excluded from the unit.

and clerical workers Jordana Kiel and Sean Campbell. Chris Steindorf oversees the day-to-day operations of the facilities to ensure the general administration of the contract by the contractor. All three DHL employees have minimal interaction with the unit employees and it is undisputed that all three are solely employed by DHL.

3. North Bend and Roseburg Facilities

As mentioned above, the parties stipulated that the employees at the Roseburg and North Bend facilities are also appropriately included in the unit and it appears that these facilities are considered to be part of the Eugene operations generally. Drivers at the Roseburg and North Bend facilities have daily contact with drivers at the Eugene facility and these drivers frequently interchange with the Eugene facility drivers when an employee calls in sick and needs to be replaced. The Roseburg facility includes stipulated supervisor Lorman Griffith and three drivers. The North bend facility includes stipulated supervisor Robert Clark and three drivers.⁸ There are approximately 34 employees in the unit.

4. Runia Transport, Inc.

Vice President of Runia Transport, Mark Runia, testified that since the Eugene, North Bend, and Roseburg employees have transferred over to Anytime Labor, Runia Transport employs only two employees. These two employees are Vice President Mark Runia himself and his wife, who is the President, Secretary, and Treasurer of the company. Other than providing the Eugene facility with vehicles and vehicle liability insurance coverage, Mark Runia's involvement with the Eugene operations is minimal. In fact, Runia testified that he had not been down to the Eugene facility in a year and a half. Likewise, Petitioner witnesses' driver Nathan Maricle, dispatcher Wendy Sage and driver Samuel Dillingham (who had worked at the facility for 7 years), all testified that they had never met Mark Runia.

b) Terms and Conditions of Employment

1. Paychecks

Prior to the September 2003 merger of DHL and Airborne, stipulated supervisors Sharrow, Rendsland, Zentz, Griffith, Clark, and the unit employees all received their paychecks directly from Runia Transport. In September, however, these employees were asked to fill out W-4 forms and applications of employment for Anytime Labor.⁹ Since September 2003, these employees have received their paychecks from Anytime Labor. When the employees switched over from Runia Transport to Anytime Labor their

⁸ Based on the stipulation of Anytime Labor and Petitioner, I find that Griffith and Clark are supervisors within the meaning of the Act and thereby excluded from the unit.

⁹ Carol Sharrow testified that on a meeting held on Labor Day 2003, Anytime Labor President Kevin LaFurge came to the Eugene facility and informed the unit employees that they would now be employed by Anytime Labor and that they should fill out Anytime Labor applications and tax forms. Petitioner witnesses drivers Nathan Maricle and Sam Dillingham both testified that they were at the Labor Day meeting, but did not recall Kevin LaFurge attending the meeting. They testified that Sharrow and ex-manager Wilson Price provided them with the Anytime Labor forms.

terms and conditions of employment changed in several ways. First, all unit employees received a pay raise of either fifty cents or a dollar an hour. Second, they began to receive paychecks every week rather than biweekly as had been the practice under Runia Transport. Third, Anytime Labor provided employees accident insurance coverage through AFLAC. The unit employees had received no insurance under Runia Transport.

2. Hiring

According to Anytime Labor Overall Manager Carol Sharrow,¹⁰ Anytime Labor Manager Chuck Rendsland and Assistant Manager Mike Zentz interview and hire all new drivers, dockworkers, and dispatchers for the Eugene facility. Sharrow also testified that Anytime Supervisors Robert Clark and Lorman Griffith hire drivers for the North Bend and Roseburg facilities respectively. According to Vice President of Runia Transport Mark Runia, Anytime Labor takes care of all hiring issues such as interviewing, hiring, drug screening, background checks, and licensing checks of new employees at all three locations. Anytime Labor also provides accident insurance for employees as well as Worker's Compensation insurance for employees. There is no evidence in the record that Runia Transport is involved in any way in hiring unit employees.

3. Wages and Promotions

Anytime overall manager Carol Sharrow testified that she is in charge of granting employees' wage increases. Sharrow testified that she would consult with President of Anytime Labor Kevin LaFurge if she needed direction on employee issues such as raises. Specifically, Sharrow testified that she had the authority to grant raises up to \$9 an hour, but had to consult with LaFurge for raises over that amount.¹¹ Petitioner witness Nathan Maricle also testified that he would go to either Sharrow or Anytime Manager Rendsland if he were requesting a raise. Although Mark Runia testified that he has no involvement in setting employee wages or deciding employee raises or promotions, Runia did testify that Sharrow consulted with both LaFurge and Runia when she was considering giving Mike Zentz a promotion. Runia testified that he thought that conversation with Sharrow had probably taken place right after the employees had been switched over to Anytime Labor. Although Runia testified that he negotiated rates with LaFurge at the time of the September transition, Runia stated clearly that he was only negotiating the rates he would pay LaFurge for the services offered and that it was LaFurge and Sharrow who made the decision to raise the employees' wages by either fifty cents or a dollar.

4. Assignment and Direction

Mark Runia testified that he is not involved in assignment, direction, or scheduling of the unit employees. According to Sharrow, unit employees are given day-

¹⁰ Carol Sharrow representing Anytime Labor was subpoenaed by the Hearing Officer in this case.

¹¹ I note that, driver Nathan Maricle testified that he had received a driving award in June of 2004 for achieving an accident free year. The award was presented to Maricle by Rendsland at a driver's meeting but indicates "Runia Transportation" as the maker of the certificate. There was no evidence to suggest that this certificate awarded to Maricle was accompanied by a promotion, wage increase, or monetary award of any kind, however.

to-day assignments and direction from Anytime managers and supervisors. Union witnesses Nathan Maricle and Sam Dillingham confirmed Sharrow's statements testifying that they received assignments from Chuck Rendsland and that they were trained by Rendsland and Anytime Supervisor Gary Songer. Petitioner witness dispatcher Sage testified that she was trained by Anytime Supervisor Applewhite. Maricle also testified that he would contact Rendsland if he called in sick, or needed to request vacation time or time off. Mark Runia testified that Anytime President Kevin LaFurge initiated the decision to have all Eugene drivers start their shift earlier in the morning than they had been reporting under Runia Transport. There is no evidence in the record that unit employees have received assignment or direction from anyone employed by Runia Transport since September 2003.

5. Discipline and Termination

Mark Runia testified that any employee complaints or disciplinary actions, including terminations, are handled by Sharrow, Rendsland, or Zentz. Sharrow testified that North Bend Supervisor Clark and Roseburg Supervisor Griffith work with Rendsland in deciding whether to discipline and terminate employees at their respective facilities. Several disciplinary action forms, all signed by Rendsland, were submitted to the record. Petitioner witness Nathan Maricle also testified that Rendsland and Sharrow were in charge of disciplining employees. Mark Runia testified that he does not receive reports on driver activity and only receives information about driver misconduct under very limited circumstances. In this regard, Runia stated that he would be informed of driver misconduct if it involved an insurance issue since Runia Transport is responsible for providing and insuring the vehicles used by the drivers in making their deliveries. Thus, if an employee's misconduct involved a severe accident that had insurance implications, Anytime Labor would inform Runia of the issue so that he could work it out with the insurance company.

Mark Runia also testified that he could remember one recent incident where a customer called Runia and complained about an employee who tore up his grass with the delivery van and left without mentioning anything to the customer about the damage. Runia said that after he received that phone call from the customer, he called Kevin LaFurge and told him that he did not want to have that driver using his vans anymore. Runia testified that he did not tell LaFurge to fire the employee or suggest any other form of personnel action be taken against him, he just expressed that he no longer wanted that particular employee driving his trucks.

II. ANALYSIS:

To establish that two or more entities are joint employers, the entities must share or codetermine matters governing essential terms and conditions of employment. The employers must meaningfully affect matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction. *M.B. Sturgis, Inc.*, 331 NLRB 1298, 1301 (2000); *Riverdale Nursing Home*, 317 NLRB 881, 882 (1995). Evidence of minimal and routine supervision of employees, limited dispute resolution authority, and the routine nature of work assignments is insufficient to establish a joint employer relationship. *Laerco Transportation*, 269 NLRB 324, 326 (1984). The Board's

decisions require that the joint employer's control over these matters be direct and immediate. *TLI, Inc.*, 271 NLRB 798 (1984), enfd 772 F.2d 894 (3rd Cir. 1985).

Based upon a careful review of the record evidence, I find that Petitioner has failed to put forth any evidence that since September 2003, Runia Transport has meaningfully affected the unit employees' essential terms and conditions of employment. Specifically, the evidence shows that Anytime Labor, and not Runia Transport, has direct and immediate control over hiring, wages, promotions, assignment, direction, discipline, and termination of the unit employees. Indeed, the evidence shows that Mark Runia has never been present at the Eugene, Oregon facility since Anytime Labor's involvement. The only evidence in the record that Mark Runia has been involved in the personnel decisions since September 2003, was Runia's testimony that shortly after September 2003, he discussed with Sharrow the possibility of promoting Assistant Manager Mike Zentz. Such involvement does not rise to the level of direct and immediate control as Zentz is not a unit employee, this appears to be an isolated incident which took place around the time of the company's transition, and there is no indication what influence, if any, Runia's input had on the question of the promotion.

Although Petitioner contends that the unit employees were under the impression that they were only switching payroll companies and not employers in September 2003, the evidence in the record demonstrates that Anytime Labor obtained direct and immediate control over the employees' essential terms and conditions of employment at that time. The fact that employees were asked to fill out W-4 tax forms and employment applications for Anytime Labor, as well as the fact that their terms and conditions of employment changed when they switched employers, should have indicated to employees that there had been a shift in management. In any event, the Board's test does not rely on the employees' perception of who has control of their terms and conditions of employment, but rather on which entity or entities has immediate and direct control of the employees' terms and conditions of employment. See *Airborne Express*, 338 NLRB No. 72, slip op. at 1 (2002); *TLI, Inc.*, 271 NLRB at 798-99.

As the record evidence fails to establish that Runia Transport has had control over any of the unit employees' essential terms and conditions of employment since September 2003 when Anytime Labor took over Runia Transport's personnel responsibilities, I find that Runia Transport is not an Employer of the unit employees.

Based on the foregoing and the stipulations of the parties, I find that the following employees of the Employer, Anytime Labor Inc., constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time drivers, loaders, and dispatchers employed by Anytime Labor, Inc. working out of the DHL Express Eugene, Oregon facility, including drivers based out of Roseburg and North Bend, Oregon, and excluding guards, clerical, confidential, and supervisory employees as defined by the Act.

Accordingly, I shall direct an election among the employees in such unit.¹²

III. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Teamsters Local #206, International Brotherhood of Teamsters, AFL-CIO.

a) LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Officer-in-Charge for SubRegion 36 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The SubRegion shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the SubRegional Office, 601 SW Second Ave., Suite 1910, Portland, OR 97204-3170, on or before Tuesday, August 10, 2004. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

¹² As I have found that, contrary to Petitioner's position, Runia is not an employer and/or joint employer of the unit employees, if the Petitioner does not wish to proceed with an election as directed, it may withdraw its petition without prejudice by notice to the Regional Director within 7 days from the date of this Decision.

b) NOTICE POSTING OBLIGATIONS

According to Board's Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

c) RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by Tuesday, August 17, 2004.

DATED in Seattle, Washington, this 3rd day of August 2004.

/s/ Richard L. Ahearn
Richard L. Ahearn, Regional Director
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